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ABSTRACT

From its inception, the United States has been faced with the problem of how to treat with the American Indian nations and tribes. This problem is many-faceted: who should deal with Indian affairs; how should the Indian be treated--as citizens or as independent nations; how should the redman be parted from his lands, which were coveted by the white settlers; and whether the government should civilize, remove, or exterminate the Indians. In 1789, Congress delegated Indian affairs to the newly created Department of War where they remained until 1849, when they were transferred to the Department of the Interior. In the years following the transfer, the Department of War began agitating for the return of the Indian Bureau. Various religious bodies, humanitarian societies, Indian agents, and many of the Indians themselves joined forces with the Department of the Interior and the Bureau of Indian Affairs to oppose the transfer. Both factions accumulated thousands of pages of data, tables, testimony, and assorted documents to defend their positions. The controversy came to a head in 1879, then gradually died out over the next 20 years. The purpose of this thesis was to examine the transfer problem--its proponents and opponents, its implications, alternatives, and the views of some of the Indians themselves. (Author/FF)

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THE PROPOSED TRANSFER OF THE INDIAN BUREAU TO THE DEPARTMENT OF WAR

BY

JAMES JOHN KNECHT II, B.S., B.A.

A Thesis submitted to the Graduate School
in partial fulfillment of the requirements
for the Degree
Master of Arts

Major Subject: American History

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"The Proposed Transfer of the Indian Bureau to the Department of War," a thesis prepared by James John Knecht II in partial fulfillment of the requirements for the degree, Master of Arts, has been approved and accepted by the following:

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In 1849, the Bureau of Indian Affairs was transferred from the Department of War to the newly created Department of the Interior. From that time until the early 1880's, the Department of War and a widespread contingent of supporters attempted to convince Congress to reverse the decision. Various religious bodies, humanitarian societies, Indian agents and many of the Indians themselves joined forces with the members of the Department of the Interior and the Bureau of Indian Affairs to

oppose the transfer. Both factions accumulated thousands of pages of data, tables, testimony and assorted documents to defend their positions. In 1876 and again in 1878 proponents of the transfer made major attempts to get transfer bills through Congress. In both cases the House of Representatives passed the required legislation but the Senate refused to consider the bills. Finally sweeping reforms were carried out by the Departmert of the Interior which destroyed most of the arguments of those favoring the transfer.

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PREFACE

From its inception the United States has been faced with the problem of how to treat with the Indian nations and tribes. This problem is many-faceted: who should deal with Indian affairs; how should the Indian be treated--as citizens or as independent nations; how should the redman be parted from his lands, which were coveted by the white settlers; and whether the government should civilize, remove or exterminate the American natives.

In 1789, Congress delegated Indian affairs to the newly created Department of War where they remained until 1849, when they were transferred to the Department of the Interior. In the years following the transfer the Department of War began agitating for the return of the Indian Bureau. The controversy came to a head in 1879, then gradually died out over the next twenty years. The purpose of this thesis is to examine the transfer problem--its proponents and opponents, its implications, alternatives and the views of some of the Indians themselves.

CHAPTER I

EARLY HANDLING OF UNITED STATES INDIAN AFFAIRS

One author has written that when the Pilgrim Fathers first landed in America, "they fell upon their knees, and then upon the aborigines."[1] This view is not far wrong since the eighteenth and early nineteenth centuries were marked by land-grabbing and the removal of the redman westward.

In the Articles of Confederation, the framework of the American government prior to the adoption of the Constitution, the section pertaining to Indian affairs was confusing and ineffective. It stated:

> The United States in Congress assembled shall also have the sole and exclusive right and power of . . . regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated.[2]

This act, in effect, provided for the formulation of fourteen separate Indian policies since each State retained the right to deal with the Indians within its boundaries as it saw fit.

Under the Articles of Confederation, Congress divided the national Indian affairs into two administrative districts through

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[1]John Gibbon, "Transfer of the Indian Bureau to the War Department," American Catholic Quarterly Review, XIX (April, 1894), 244.

[2]Francis Paul Prucha, American Indian Policy in the Formative Years, 30, quoting Journals of the Continental Congress, IX, 844-845.

the ordinance of August 7, 1786. The districts were separated by the Chio River and a superintendent was placed in charge of each one. These superintendents were ordered to communicate to Congress through the Secretary of War and to take their orders from him. A further provision of the ordinance required all traders to purchase a license and to post a bond with either the superintendents or their deputies before they could conduct business with the Indians.[3] These regulations were ignored to a great extent since there was little if any danger of being caught in the act of breaking them.

Within less than a year following this act, a Convention met in Philadelphia and drafted the Constitution of the United States. Under it

> the status of the American Indian . . . was left indefinite . . .. By implication the Indians were almost outside the constitutional system. They were denied citizenship, exempted from taxation, and not counted in the apportionment of representation and direct taxes. Congress was authorized merely to regulate commerce with the Indian tribes.[4]

Indian affairs were reaffirmed as a responsibility of the Secretary of War by the Act of August 7, 1789, creating the Department of War.[5]

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[3]Journals of the Continental Congress, XXXI, 491.

[4]Alfred H. Kelly and Winfred A. Harbison, The American Constitution--Its Origins and Development, 301.

[5]Act of August 7, 1789, I Stat. 49-50.

During the next twenty-five years the frontier was essentially a military frontier since in both the northern and southern districts the Indian nations rose in revolt. Congress enacted legislation to separate the red and white races and, to give the bill teeth, the United States Army was directed to enforce the act.[6] This legislation proved workable and was made permanent in 1802.[7]

The great influx of Americans into the old Southwest and the Ohio valley in the late 1820's and early 18 0's forced a remodeling of the United States Indian policy. The redman was reluctant to cede any more land, but in the face of pressure from speculators and settlers the government set up a "permanent" Indian territory for the Southern tribes in the present-day state of Oklahoma. The United States Army was ordered to move all Indians east of the Mississippi River to the new reservation.

With the acquisition of the Louisiana purchase territory in 1803, the United States doubled its land area and with it the number of Indians. The volume of work pertaining to Indian affairs forced a number of changes in the Department of War. Secretary of War John C. Calhoun organized the Bureau of Indian Affairs on March 11, 1824.[8] On July 9, 1832, Congress created the office of

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[6]Act of May 19, 1796, I Stat. 469-474.

[7]Act of March 30, 1802, II Stat. 139-147.

[8]19th Cong., 1st sess., House Document No. 146, 6.

Commissioner of Indian Affairs to reduce the load on the Secretary of War.[9] Two years later a new trade and intercourse act passed which organized the department's agents without changing the duties or responsibilities of the Commissioner.[10]

Late in 1848, Secretary of the Treasury Robert J. Walker recommended in his annual report that a new department of government be created.[11] The Secretary felt that several of the existing departments were overworked and that by establishing a new department the problem could be eliminated. In reference to Indian affairs the Secretary stated:

> The duties now performed by the Commissioner of Indian Affairs are most numerous and important, and must be vastly increased with the great numbers of tribes scattered over Texas, Oregon, New Mexico, and California, and with the interesting progress of so many of the tribes in Christianity, knowledge, and civilization. These duties do not necessarily appertain to war, but to peace, and to our domestic relations with those tribes placed by the Constitution under the charge of this Government.[12]

In the report the Secretary also stated that the Indian Bureau should be located in the same department as the Land Office since in negotiating treaties for reservations many questions arose

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[9]Act of July 9, 1832, IV Stat. 564.

[10]Act of June 30, 1834, IV Stat. 735-738.

[11]Congressional Globe, 30th Cong., 2nd sess., 514, 673.

[12]30th Cong., 2nd sess., House Executive Document No. 7, 36-37.

dealing with land claims which must be decided by the Commissioner of the General Land Office.[13]

Congress acted on the Secretary of the Treasury's recommendation and a bill to carry out this objective was proposed in the House of Representatives. After being passed with relative ease in the House, the measure ran into stiff opposition in the Senate. Senator John C. Calhoun and several other Southern senators objected to the entire bill on the grounds that it would usurp powers belonging to the states. These men also objected specifically to the portion concerning Indian affairs. In a speech in Congress Calhoun remarked:

> Who does not see that the Indian affairs are immediately connected with the War Department? Who does not see that the preservation of peace and harmony on our frontier . . . depends upon the action of the War Department? In my judgment, the Indian affairs are so intimately connected with the War Department that they cannot be separated without producing mischievous consequences.[14]

Proponents of the bill, such as Senator Jefferson Davis of Mississippi, argued:

> When our intercourse with the Indian tribes was held under the protection of troops . . . it was proper to place Indian relations under the War Department. Happily for them, honorably for us, the case has greatly changed . . ..[15]

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[13] Ibid.

[14] Congressional Globe, 30th Cong., 2nd sess., 673.

[15] Ibid., 678.

Davis then mentioned the progress some of the tribes had made toward civilization. He also spoke of the government's new responsibilities toward a peaceful class of Indians, which the United States had acquired in the Mexican cession. He concluded by saying: "These and other changes in their condition recommend a corresponding change of administrative organization. War being the exception, peace the ordinary condition, the policy should be for the latter, not the former condition."[16]

Another factor which may have contributed to the final decision was the investigation by the House Committee for Retrenchment Reorganization of Executive Departments in 1842. Their report stated:

> The evidence is submitted as to the general management and present condition of Indian Affairs, and it requires little comment. It exhibits an almost total want of method and punctuality, equally unjust and injurious to the Government and to the tribes to whom we have voluntarily assumed obligations which we are not at liberty to disregard. It will be seen that the accounts of millions of expenditures have been so loosely kept as scarcely to furnish any trace or explanation of very large sums, and that others have been misapplied, so as to impose serious losses on the Indians and heavy responsibilities on the Government; that in some books (the only record kept of these accounts) no entries have been made for a period of several years; and that, where entries have been made, they are so imperfect that the very clerks who kept them could not state an account from them.[17]

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[16] Ibid., 678.

[17] 27th Cong., 2nd sess., House Report No. 741, 26.

At the very end of the Congressional session the Senate passed the bill creating the Department of the Interior[18] by a slim margin of 31 to 25.[19] Section five provided, "That the Secretary of the Interior shall exercise the supervisory and appellate powers now exercised by the Secretary of the War Department, in relation to all the acts of the Commissioner of Indian Affairs . . . ."[20] This act, in effect, changed very little in the operation of the Bureau of Indian Affairs, but since it transferred control from one department to another, it became a bitter bone of contention between the two.

Although the bill appeared to shift the Indian Bureau from military to civilian control, in actuality civilians had been holding many, if not most, of the positions within the Bureau after 1834.[21]

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[18]Act of March 3, 1849, IX Stat. 395.

[19]Congressional Globe, 30th Cong., 2nd sess., 680.

[20]Act of March 3, 1849, IX Stat. 395.

[21]Felix S. Cohen, Handbook of Federal Indian Law, 11.

CHAPTER II

THE RISING STORM

Following the transfer of the Indian Bureau in 1849, the major change to occur, aside from reporting to a new department head, was the philosophy of the Bureau. Instead of making war upon the redmen, it was hoped that by educating and civilizing the Indians eventually they could be absorbed into the American way of life. To carry out this civilizing of the redmen, a special kind of man was needed to perform the duties of an Indian agent. Francis E. Leupp, editor of Good Government, in an article for Public Opinion in 1895, attempted to define the perfect agent. He wrote:

> To handle the affairs of an Indian agency as they should be handled requires not only honesty, intelligence, decision of character, and a good ordinary education, but a considerable knowledge of the Indian as a human being, of tribal customs and traditions, of the local environment both physical and moral, and of official precedent. Such knowledge is not born in a man; it comes by experience only.[1]

Unfortunately, civilians appointed as agents during the mid-nineteenth century seldom possessed the qualifications to act effectively. The Indian Bureau was a favorite department where political leaders could reward their supporters with lucrative appointments. As Frank Wood stated in a 1903 article:

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[1]Francis E. Leupp, "The Spoils System and the Indian Service," Public Opinion, XXVIII (May 23, 1895), 570.

> The agent is rarely selected on account of his fitness for the place he is given, or for his interest in the civilization, education, or Christianization of the Indians. The exigencies of politics, not the needs of the Indians, dictate the appointment of agents. The local politicians of the States and Territories nearest the Indian Reservations demand, and are generally allowed, the right to nominate the Indian agents, and they are too often selected from second and third rate politicians to pay political debts. Such officials teach inefficiency and immorality.[2]

The patronage system also created problems in that the agents seldom remained at their posts for any great length of time. After elections a new group of political hacks normally were appointed as agents. This continuous turnover of agents seriously crippled the Bureau of Indian Affairs since the effective management of an Indian agency required years of training and experience. Francis E. Leupp summed up this problem.

> The effect of frequent changes of agents, therefore, is to educate a series of pupils--some competent and receptive and others not--for a position which no one of them is to hold after he is educated for it. It is safe to say that in a century of service more good could be done by keeping in office four dull men for 25 years each than 25 bright men for only four years each. A dull man could at least have ground into him, by a certain daily routine of duty, some ideas devised by persons of broader intelligence, and would have time left in which to make practical use of them; but the bright man would no sooner absorb such ideas and prepare to put them into practice than he would have to make way for a successor who in turn must begin his education de novo.[3]

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[2]Frank Wood, "The Indian Problem," Outlook, LXXV (September 19, 1903), 165.

[3]Leupp, 570.

Even when the agents were honest and capable men, their job was difficult and in some cases impossible to carry out. One major cause of their difficulties was the fear and hatred felt for the redman by the settlers on the frontier. In addition to this, the agents were faced with a multitude of other problems: white settlers encroaching on the reservation lands; merchants, farmers and ranchers conspiring to keep trouble stirred up so troops would remain in the area and provide a market for the settlers' goods; immorality and vices of the white men corrupting the Indians gathered at the agencies and military posts; faulty translating between the Indians and the whites; and lawless white men preying upon the reservation Indians, stealing their livestock and murdering the owners if they tried to resist. The Bureau of Indian Affairs was virtually helpless to prevent such activities and a large percentage of the Indian wars of the nineteenth century can be traced back to these causes.[4]

The Bureau was also saddled with a wholly inefficient system of records and accounting which had carried over from the days of War Department control. This was the same system earlier described as exhibiting "an almost total want of method and punctuality, equally unjust and injurious to the Government and to the tribes . . .."[5]

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[4]Paul I. Wellman, Death on the Prairie, 185. See also Keith A. Murray, The Modocs and Their War, 768.

[5]27th Cong., 2nd sess., House Report No. 741, 26.

Even with the corruption and problems inherent in its operation, the Bureau of Indian Affairs operated relatively unnoticed during its first eighteen years under the Department of the Interior. The lack of criticism of its methods may be attributed to the nation's attention being focused on the explosive sectional dispute over slavery and the bloody civil war which resulted. With the conclusion of the war, however, the nation's attention turned rapidly to Indian affairs as a series of Indian outbreaks set the Great Plains afire and the Bureau proved to be unable to restore the peace. A number of factions began to clamor for the restoration of the Indian Bureau to the Department of War. Early in 1867, Congress listened to a report from the Committee on the Condition of the Indian Tribes, which presented the arguments both for and against the proposed transfer and recommended that, since each department scrutinized the activities of the other so closely, the controversy served as a check on both, and the Bureau of Indian Affairs should remain where it was.[6]

In spite of this recommendation, the House of Representatives passed a transfer measure by a vote of 76 to 73.[7] The Senate, however, defeated the bill by a vote of 24 to 13, but suggested

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[6] 39th Cong., 2nd sess., Senate Report No. 156, 6-7.

[7] Congressional Globe, 39th Cong., 2nd sess., 898.

an investigation of the entire question. The House, in turn, refused to approve this proposal.[8]

This flurry of action, however, did nothing toward settling the Indian wars raging in the West. To deal with these, Congress appointed a commission--the so-called Indian Peace Commission--to inquire into the causes of the wars, restore the peace, and devise some method for civilizing the redman.[9] In its report the commission discussed the proposed transfer of the Bureau of Indian Affairs and offered two suggestions as to the solution of the problem. The first proposal was to decide what the future policy would be: "If we intend to have war with them the bureau should go to the Secretary of War. If we intend to have peace it should be in the civil department."[10] Later in its report the commission changed its mind somewhat and stated:

> The vast and complicated duties now devolved upon the Secretary of the Interior leave him too little time to examine and determine the multiplicity of questions necessarily connected with the government and civilization of a race. The same may be said of the Secretary of War. . . . We, therefore, recommend that Indian affairs be committed to an independent bureau or department.[11]

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[8] Ibid., 1720, 1988.

[9] 40th Cong., 2nd sess., House Executive Document No. 97, 1.

[10] Ibid., 20.

[11] Ibid., 21.

The Peace Commission did its work as well as it could under the circumstances, but the clamor for transferring the Indian Bureau continued unabated.[12] Proponents of the transfer argued that the Indian service was corrupt, with many agents stealing government funds and starving the Indians. Army officers would be more honest and efficient since they were subject to trials for misconduct under military law. The purchase and supply systems of the Department of the Interior were reported inefficient and duplicated those of the military. In case of further Indian uprisings, it was claimed, the army could react more quickly if the Bureau of Indian Affairs was in the Department of War. Finally the government would save money by using existing forts for agencies and by using officers, who were already being paid, as agents.[13]

Opponents of the transfer answered with arguments of their own, which the Secretary of the Interior summed up ably in his annual report for 1868. The reasons offered were:

> 1. That the prompt, efficient and successful management and direction of our Indian affairs is too large, onerous, and important a burden to be added to the existing duties of the Secretary of War. . . .

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[12]The Peace Commission concluded the Treaties of Fort Laramie and Medicine Lodge Creek, but the Indians were hostile to attempts to put them on these reservations since the areas were too small and did not allow enough hunting room. Robert G. Athearn, William Tecumseh Sherman & the Settlement of the West, 183.

[13]44th Cong., 1st sess., House Report No. 354, 8-9. See also 45th Cong., 3rd sess., House Report No. 92, 13-16.

> 2. The "transfer" . . . will create a necessity for maintaining a large standing army in the field. . . .
> 3. Our true policy toward the Indian tribes is peace, and the proposed transfer is tantamount . . . to perpetual war. . . .
> 4. Military management of Indian affairs has been tried for seventeen years and has proved a failure . . ..
> 5. It is inhuman and unchristian . . . to destroy a whole race by such demoralization and disease as military government is sure to entail upon our tribes. . . .
> 6. The conduct of Indian affairs is . . . incompatible with the nature and objects of the military department. . . .
> 7. The transfer to the War Office will be offensive to the Indians, and in the same proportion injurious to the whites. . . .
> 8. In the report . . . of the peace commission . . . the commission unanimously recommended that the Indian affairs should be placed, not in the War Office, but upon the footing of an independent department or bureau. . . .
> 9. The methods of military management are utterly irreconcilable with the relation of guardian and ward. . . .
> 10. The transfer will . . . entail upon the treasury a large increase of annual expenditure. . . .
> 11. The presence in peaceful times of a large military establishment in a republic always endangers the supremacy of civil authority and the liberties of the people. . . .[14]

Shortly after the Peace Commission issued its report, the House of Representatives passed a transfer bill (H.R. 1482) by a vote of 116 to 23.[15] The Senate referred the bill to the Committee on Indian Affairs,[16] which was hostile to the transfer, rather than

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[14]40th Cong., 3rd sess., House Executive Document No. 1, Interior, 467-473.

[15]Congressional Globe, 40th Cong., 3rd sess., 21.

[16]Ibid., 39-43.

to the Committee on Military Affairs where it probably would have been received more favorably.[17] The bill died in committee.

In the midst of this controversy Ulysses S. Grant became President of the United States and almost immediately inaugurated a new policy in Indian affairs. This plan--the so-called Peace or Quaker Policy--turned the appointment of agents over to various churches. The policy eliminated patronage appointments and quieted the "transfer" controversy for a time. Unfortunately, within a very few years it was obvious that the "Peace Policy" was functioning little better than its predecessor, and the controversy flared again.[18]

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[17]Loring Benson Priest, Uncle Sam's Stepchildren, 18.

[18]William H. Leckie, The Military Conquest of the Southern Plains, 136-141. See also Athearn, 248-249.

CHAPTER III

MAJOR ATTEMPT IN THE FORTY-FOURTH CONGRESS

Early in 1874, Congress was again reminded of the transfer problem when the Kansas state legislature sent a resolution to Congress requesting the Kansas representatives and senators to "use their influence to secure the enactment of a law requiring the transfer of the Bureau of Indian Affairs to the Department of War."[1] The question again arose during this session of Congress in the debate over the Indian appropriations bill.[2] These, however, were only the preliminary skirmishes before the first of the two major attempts to transfer the Indian Bureau back to the Department of War. This major confrontation occurred during the first session of the Forty-Fourth Congress. The discussion began early in the session with the submission of the annual reports of both the secretaries of Interior and War. Commissioner E. P. Smith of the Bureau of Indian Affairs stated in the Secretary of the Interior's report that he opposed the transfer since, "with the exception of a portion of the Sioux Indians in Montana and Dakota, the whole Indian population is quiet, and, except under the most

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[1] 43rd Cong., 1st sess., Senate Miscellaneous Document No. 75, 1. This resolution was presented after a period of Indian hostilities resulting from Kiowa attempts at revenge after their defeat at the battle of Adobe Walls. Paul I. Wellman, Death on the Prairie, 112.

[2] Congressional Record, 43rd Cong., 1st sess., 3523-3526.

blundering and grossly unjust treatment, will cause no apprehensions of war or serious difficulty hereafter."[3] However, Smith did suggest that perhaps the Department of War could be instructed to purchase and transport the $2,000,000 worth of supplies required annually by the Indian Bureau through its already established Quartermaster and Commissary Departments.[4]

The annual report of the Secretary of War produced a totally different view of the transfer question. A section of a report from General John Pope, Commander of the Department of the Missouri, which was contained in the Secretary of War's report, summed up the feelings of the military. General Pope wrote that

> there is no class of men in this country who are so disinclined to war with the Indians as the army stationed among them. The army has nothing to gain by war with the Indians, on the contrary it has everything to lose. In such a war it suffers all the hardships and privation; and, exposed as it is to the charge of assassination if the Indians are killed; to the charge of inefficiency if they are not; to misrepresentation by the agents who fatten on the plunder of the Indians, and misunderstood by the worthy people at a distance, who are deceived by these very agents and their following, the soldier has little to expect from public feeling. Nevertheless he is so placed under present arrangements and orders that he has no power whatever on Indian reservations to redress or prevent wrongs which drive the Indian to war: on the contrary, at the demand of the very agent whose unfair dealing with the Indians has brought on the difficulty, he is obliged to pursue and force back to the same deplorable state and place Indians whom he knows to have been wronged and who have only done substantially what he would have done

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[3] 44th Cong., 1st sess., House Executive Document No. 1, pt. 5, 521.

[4] Ibid., 522-523.

> himself under like provocation. Such a relation to Indian affairs and Indian agents is unjust and unfair to the Army and a serious injury both to the interests of the government and the well being of the Indians.[5]

Proponents of the transfer were not slow to act in the Forty-Fourth Congress. On December 14, 1875, William A. Piper, representative from California, introduced a bill to transfer the Bureau of Indian Affairs to the Department of War[6] and was quickly followed by Senator Phineas W. Hitchcock of Nebraska (December 20, 1875),[7] Representative Roger Q. Mills of Texas (January 12, 1876)[8] and Representative John Hancock of Texas (January 12, 1876).[9] All four bills were referred to the Committee on Indian Affairs.

On February 16, 1876, Congress received and referred to the Committee on Indian Affairs a resolution of the California legislature requesting the California senators and representatives to "use their influence to obtain the passage of a law, at an early day, providing for the transferring of the entire management of

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[5]44th Cong., 1st sess., House Executive Document No. 1, pt. 2, 76-77. For a rebuttal to Pope on the army's attitude toward Indian wars, see Carl Schurz's testimony, post, p. 37.

[6]Congressional Record, 44th Cong., 1st sess., 212.

[7]Ibid., 248.

[8]Ibid., 379.

[9]Ibid. All three of these bills were started by Congressmen from states which had suffered from Indian hostilities during the preceding two years.

Indian affairs from the Department of Interior to that of the War Department."[10]

On March 9, 1876, the Committee on Military Affairs submitted its report, part three of which concerned the transfer of the Bureau of Indian Affairs. In order to gain information on this subject and several others, the committee sent a letter to most of the ranking army officers requesting their opinions. The evidence accumulated in this manner contained "the views of the General, Lieutenant-General, the major generals, all the brigadier-generals but one, thirty-one colonels and twenty-nine lieutenant-colonels, majors, and captains."[11] All but two of the officers favored the transfer. General William T. Sherman expressed his opinion thus:

> I firmly believe that the Army now occupies the positions and relations to the great mass of the Indian tribes that will better enable the Government to execute any line of policy it may deem wise and proper, than by any possible system that can be devised with civil agents. The Indians, more especially those who occupy the vast region west of the Mississippi, from the Rio Grande to the British line, are natural warriors, and have always looked to the military rather than to the civil agents of Government for protection or punishment; and, were the troops to be withdrawn, instant war would result. If it be the policy of the Government, as I believe it is, to save the remnant of these tribes, it can only be accomplished by and through military authority. . . .[12]

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[10] 44th Cong., 1st sess., House Miscellaneous Document No. 92, 1.

[11] 44th Cong., 1st sess., House Report No. 354, 4.

[12] Ibid., 9.

After considering the testimony and opinions of the officers and the evidence from several additional sources (a number of civilians, the report of a commission sent to purchase the Black Hills from the Sioux, and reports of the Secretary of the Interior and the Commissioner of Indian Affairs), the committee recommended the transfer of the Bureau of Indian Affairs to the Department of War because

> we are of the opinion that the conduct of Indian affairs under civil administration, after a practical working of twenty-seven years, has proved fraudulent, expensive, and unsatisfactory to the Indians, provoking them to hostilities that have cost the Government many millions, besides the lives of thousands of citizens and the destruction of their property, whereas the affairs of this branch of the public service, while under the control of the War Department, were honestly, economically, and firmly administered and executed.[13]

On March 14, 1876, the Committee on Indian Affairs submitted both a majority and a minority report on the transfer bills after hearing testimony or receiving written statements from a number of prominent figures. Among those testifying were General William T. Sherman, John Wesley Powell, John B. Sanborn, five United States representatives,[14] five Territorial delegates,[15] and sixteen other

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[13] Ibid., 6.

[14] Representatives: John K. Luttrell of California, John Hancock and James W. Throckmorton of Texas, Horace B. Strait of Minnesota, and Thomas M. Gunter of Arkansas.

[15] Delegates: S. B. Elkins of New Mexico, J. P. Kidder of Dakota, Thomas M. Patterson of Colorado, William R. Steele of Wyoming, and Martin Maginnis of Montana.

concerned citizens. The statements given by each of the above accompanied the report. Representative James W. Throckmorton of Texas stated that "it would be better that the transfer should be made. The reasons are a great many, but the first and most important one is that it will afford greater protection and more security to life and property to the white people on the frontier . . . ."[16]

John Wesley Powell, noted explorer and scientist for the Smithsonian Institution and the Department of the Interior, disagreed. Concerning the Indians west of the Rocky Mountains, he insisted that "they are not hostile, not organized in large bands hostile to the United States, and there is no reason why those Indians should be governed or managed by the military authorities." Powell then explained that using the military to handle Indian affairs would be disastrous because the presence of a body of enlisted men would throw the reservation into a "pandemonium of prostitution." In answer to a question about the Plains Indians, Powell responded, "I do not think the Indians of the plains should be turned over to the War Department. I think they should be overawed by strengthening the forts on the plains, but the agencies should be managed by civilians."[17]

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[16]44th Cong., 1st sess., House Report No. 240, 5.

[17]Ibid., 8-9.

Representative Horace B. Strait from Minnesota pointed out the economic advantages of the transfer. He said to the committee:

> I am led to believe that it would be beneficial for them to make the transfer. . . . I think that the Indians will be likely to be better managed and kept upon their reservations, and it could be done at a less expense. I think this: that the officers who could have charge of them are men that are engaged in the special profession they are assigned to and would be likely to better care for the Indians. I think, for instance, the transportation of supplies would be better done by the Quartermaster's Department than it is now. I think they would be likely to get better rations from the Commissary Department and get them more regularly than they do now. I think contracts for purchases are made much cheaper by Army officers than they are by Indian agents.[18]

William Welsh, first chairman of the Peace Commission and now head of the Episcopal Church Committee on Indian Civilization, presented the arguments of those favoring the creation of a separate Department of Indian Affairs:

> That committee [Episcopal Church Committee] had a meeting not long ago, and they were unanimously of opinion that there ought to be a separate Bureau, and only through a separate Bureau that would have a permanent character we could ever expect the civilization of our Indians. There has been a very great improvement during the present administration in the agents and in the civilizing influences exerted over the Indians by the agents. But the changes in the Interior Department and the political influences in that Department interfere with any permanent policy, and do not give promise of such a result as we think could be had if we could have a separate Bureau, with an intelligent person at the head of it and freed from political influences, so that there could be some permanency.[19]

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[18] Ibid., 13.

[19] Ibid., 31.

Finally, John B. Wolff, who had been active in Indian affairs for twenty years, reported to the committee that he had carefully analyzed the report of the Board of Indian Commissioners for 1874 and found that "all the agents, with one or two exceptions, are willing to take the responsibility of dispensing with the military, and deem their presence a calamity."[20]

The preceding points of view illustrate the range of opinions concerning the transfer, but it should be noted that the gentlemen questioned by the committee did not divide up equally in support of these views. Of the twenty-nine men surveyed, twenty favored the transfer, seven opposed it, and two took a more or less neutral position. One of the neutrals, General D. S. Stanley, believed that there were certain advantages in either arrangement, while the other, Representative Thomas M. Gunter, felt that only hostile Indians should be transferred to the Department of War. In addition, two of those opposing the transfer believed that while the Bureau of Indian Affairs should not go to the Department of War, perhaps it did not belong in the Department of the Interior either and that it should be a separate department.[21]

In light of the testimony it was not surprising that the majority of the Committee on Indian Affairs reported, "[We] are

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[20] Ibid., 36-38.

[21] Ibid., 2-38. It should be noted that all ten representatives and delegates were from states or territories which had Indian problems.

of the opinion that the transfer should be made, and to that end have prepared and herewith submit the accompanying bill [H.R. 2677] as a substitute for those referred to the committee, and recommend its passage."[22]

The surprising fact, however, was that only six of the eleven members of the committee voted in favor of the transfer. The remainder submitted a minority report. This report used little if any of the testimony heard by the committee and developed its arguments and conclusions almost entirely from the reports of the Peace Commission and those of the Commissioner of Indian Affairs for 1868, 1871, and 1873. The minority conclusion was:

> The office of Commissioner of Indian Affairs ought to be lifted up and exalted to a Cabinet office. It should be . . . a "Department," with full power in all matters pertaining to Indian affairs.
>
> To talk of any civilizing influence in the Army, it seems to us, is preposterous. Divorce the Bureau from the Interior Department, if you choose; but don't, in the name of justice and humanity, turn it over again to the War Department. Don't do this cruel and terrible thing, but elevate the Bureau to a Department. Emancipate it. Lift it up and place its occupant on a level with the President's counselors, and you will exalt the service.[23]

On March 14, 1876, bill H.R. 2677 was favorably reported to the House of Representatives.[24] Over the next five weeks this transfer bill was debated on the floor. Initially the debate

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[22] Ibid., 1.

[23] Ibid., 47.

[24] Congressional Record, 44th Cong., 1st sess., 1701.

centered on whether the Committee on Indian Affairs or the Committee on Military Affairs should have jurisdiction over the matter and on what day the bill should be considered. Before the discussion ended, however, Representative Samuel J. Randall of Pennsylvania managed to slip in a few remarks favoring the transfer.

> I have never yet been able to have an intelligent contradiction to the proposition that when . . y supplies are being distributed to the Army, . . y at the same time Indian supplies could not be distributed to the Indians.
>
> These officers are governed by military laws; they are susceptible of prompt punishment if they fail faithfully to perform their duties; . . .. How many Indian agents, I would like to ask, who have committed frauds, have been punished at all? That is one reason which I had in favor of this transfer. . . .[25]

The bill was laid aside until April 5, 1876. At that time William A. J. Sparks, a representative from Illinois, spoke in favor of the transfer, quoting extensively from the reports of the Committee on Military Affairs for 1874 and 1876, the report of the Committee on Indian Affairs for 1876, the report of the Peace Commission, reports of the Commissioner of Indian Affairs, and reports of the Board of Indian Commissioners.[26]

Following Sparks' speech, Representative Samuel S. Cox of New York took the floor and spoke against the transfer. Cox argued that the Indians opposed the transfer, the Department of

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[25]Ibid., 1704.

[26]Ibid., 2229-2233.

War was riddled with fraud and corruption, and to save money the army should be cut in size instead of being given additional duties. He concluded "that by all the sanctions of economy, faith, justice, humanity, honor, statesmanship, and civilization, the peaceful policy is that which is kindest, wisest, and best."[27]

After Cox's speech the transfer bill was again set aside temporarily. On April 12, 1876, the debate resumed with Representative Philip Cook of Georgia taking the floor. Cook favored the transfer and quoted statistics on the cost of caring for the Indians. He showed that during the period from 1840 to 1850 the cost was $13,079,000, while from 1865 to 1876 it rose to $57,242,295.[28] Cook stated that the Indians never received so much as one-half of the money appropriated for them. He concluded his speech with several references to testimony given by Indians and the views of a number of officers.[29]

Representative Julius H. Seelye of Massachusetts gave some very convincing evidence that the Department of War was not as economical in its purchasing and transporting of supplies as had been indicated earlier. Seelye presented as evidence a table "prepared from official data furnished me from both the War Department and that of the Interior, in which comparative cost

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[27]Ibid., 2233-2242.

[28]Ibid., 2428.

[29]Ibid., 2428-2430 and 2463-2466.

is given of beef and flour per hundred weight as contracted for and furnished to certain military posts and Indian agencies lying in close proximity to each other." This table showed that "the average cost of beef and transportation of the same at these military posts was, in the fiscal-year 1874-'75, 78 per cent. more; and in the present fiscal-year 38 per cent. more than at the neighboring Indian agencies" and that the cost of flour was also substantially higher.[30]

Representative Charles E. Hooker of Mississippi spoke in favor of the transfer. After his speech the House again put aside the transfer bill temporarily. On April 18, 1876, the bill was presented for debate. Representatives David B. Culberson of Texas, Charles E. Hooker of Mississippi, and Henry B. Banning of Ohio spoke for the transfer while Delegate Orange Jacobs of Washington Territory opposed it.[31]

Finally, on April 21, 1876, after a short debate the bill was voted on. The House of Representatives passed the legislation by a vote of 130 to 94 with 66 abstaining.[32]

On June 21, 1876, the bill was reported from the Senate Committee on Indian Affairs but was postponed until the second session of the Congress.[33] It is ironic that the bill was

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[30] Ibid., 2468.

[31] Ibid., 2566-2576.

[32] Ibid., 2686.

[33] Ibid., 3944.

postponed at this time. If it had remained in committee for another week or ten days, it might have been passed by the Senate, for on June 25, 1876, General George Custer's forces were cut to pieces by the Sioux nation at the Battle of the Little Bighorn.[34] Immediately after the news of the disaster the bill might have had an excellent chance for passage, but six months passed between the first and second Congressional sessions. Since the Senate was less enthusiastic about transfer legislation than the House of Representatives, H.R. 2677 was never considered in the second session of the Forty-Fourth Congress.

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[34]Peter J. Rahill, The Catholic Indian Missions and Grant's Peace Policy, 1870-1884, 161.

CHAPTER IV

THE JOINT COMMITTEE

From its very beginning the Forty-Fifth Congress showed a marked interest in the proposed transfer of the Indian Bureau from the Department of the Interior to the Department of War. In the first session, which lasted only forty-nine days, three separate transfer bills (H.R. 295 introduced by Henry B. Banning of Ohio,[1] H.R. 655 introduced by Roger Q. Mills of Texas,[2] and H.R. 959 introduced by Alfred M. Scales of North Carolina[3]) were submitted and referred to the House Committee on Indian Affairs.

The second session avoided the question for two months. Then, on February 4, 1878, the California legislature sent a resolution to Congress asking that the California senators and representatives work actively towards the passage of a bill which would provide for the shifting of the management of Indian affairs to the Department of War.[4] On February 25, 1878, Congress was again reminded of the problem by a "Memorial of the Cherokee, Creek and Seminole, Choctaw and Chickasaw Nations, of

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[1] Congressional Record, 45th Cong., 1st sess., 179.

[2] Ibid., 192.

[3] Ibid., 236.

[4] 45th Cong., 2nd sess., House Miscellaneous Document No. 19, 1.

the Indian territory, to the Congress of the United States, in opposition to the transfer of the Indians from civil to military management . . . ."[5] In a ten-page document the representatives of the Five Civilized Tribes quoted from annual reports of the Commissioner of Indian Affairs and several other sources to support their arguments. The memorial also claimed that the transfer bill would violate the Cherokee treaty of July 19, 1866, in that the Secretary of War would be given powers that the treaty said could not be granted "unless approved by the Cherokee National Council."[6]

On the same day that the memorial from the Five Civilized tribes was read to Congress, Alfred M. Scales of North Carolina reported bill H.R. 3541 from the House Committee of Indian Affairs as a substitute for the three bills (H.R. 295, H.R. 655 and H.R. 959) introduced during the first session.[7] Since argument immediately arose over the bill, it was set aside to be considered at a later date. Subsequent events, however, rendered this unnecessary.

In May of 1878, while the House of Representatives considered the Army appropriation bill, an amendment was suggested by the Committee of the Whole, as an additional section of the bill, which read:

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[5]45th Cong., 2nd sess., House Miscellaneous Document No. 33, 1.

[6]Ibid., 10.

[7]Congressional Record, 45th Cong., 2nd sess., 1312.

> . . . That from after the 1st day of January, 1879, the Secretary of War shall exercise the supervisory and appellate powers, and possess the jurisdiction now exercised and possessed by the Secretary of the Interior in relation to all acts of the Commissioner of Indian Affairs, board of Indian commissioners, or otherwise . . ..[8]

The amendment passed by a slim margin of 15 votes (130 to 115 with 46 not voting)[9] and later in the day the entire Army appropriation bill passed and was sent to the Senate.[10]

On June 28, 1878, the Senate voted to amend section 28 (the transfer section) of the Army appropriation bill as received from the House of Representatives. Instead of transferring the Bureau of Indian Affairs immediately, the Senate proposed that a joint Congressional commission be appointed to study the question. This amendment passed by a vote of 42 to 9 with 25 absent or not voting.[11]

The House and Senate ironed out their differences in the wording of the bill very rapidly and on June 18, 1878, the President signed the legislation. Section 14 of this appropriations bill provided:

> That three Senators, to be appointed by the President of the Senate, and five Representatives, to be appointed by the Speaker of the House are hereby

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[8] Ibid., 3876.

[9] Ibid.

[10] Ibid., 3878.

[11] Ibid., 4306-4307.

> constituted a joint committee who shall take into consideration the expediency of transferring the Indian Bureau to the War Department. . . .[12]

Senators Alvin Saunders of Nebraska, Richard J. Oglesby of Illinois and Thomas C. McCreery of Kentucky; and Representatives Alfred M. Scales of North Carolina, Andrew R. Boone of Kentucky, Chas. E. Hooker of Mississippi, J. H. Stewart of Minnesota and Nelson H. Van Vorhes of Ohio were appointed to serve on the committee.[13]

It is interesting to note that the committee was evenly divided in that McCreery, Scales, Boone and Hooker indicated by their voting on the amendment to the Army appropriation bill that they favored the transfer while Saunders, Oglesby, Stewart and Van Vorhes opposed it.

The committee held an organizational meeting on June 20, 1878, and on June 22, 1878, recessed until September. During the interim the committee accumulated data from several sources including Congressional documents and information requested from the departments of War and Interior.[14] On September 25, 1878, the committee met in St. Louis. This was the first of a number of sessions held in various parts of the country in which the committee took testimony. Other stops included various locations

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[12]Act of June 18, 1878, XX Stat. 152.

[13]45th Cong., 3rd sess., Senate Report No. 693, iii.

[14]Ibid.

in the Indian territory; Omaha, Nebraska; the Omaha and Winnebago agencies in northern Nebraska; Salt Lake City, Utah; Carlin, Nevada; and San Francisco, California. The committee then returned to Washington where it held several additional sessions.[15] During these hearings the committee interviewed seventy-nine witnesses, including thirteen Indian chiefs and fourteen army officers. Chief Joseph of the Nez Percés,[16] Brigadier-General George Crook,[17] General William T. Sherman,[18]

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[15]Ibid., ix.

[16]Joseph was chief of the Nez Percés, a tribe which had been friendly to the white man from the time of their meeting with the Lewis and Clark expedition until 1877. In 1876, the government tried to enforce an earlier treaty. This enforcement plus a number of outrages committed by white squatters led to an outbreak by a small band of the Nez Percés and Joseph was soon drawn into it. Realizing that he could not fight the army successfully, Joseph attempted to reach Canada. After a brilliant retreat of over a thousand miles, the Nez Percés were caught and forced to surrender. They were then removed to the Indian territory and eventually back to reservations in Idaho and Washington. Thus Joseph had had experience with both civilian and military control. W. J. Ghent, "Joseph," Dictionary of American Biography, X, 218-219.

[17]George Crook had had extensive experience with Indians before he was called by the joint committee. Following the Civil War, Crook "was assigned to the command of the district of Boise, Idaho, where for three years he was engaged in bringing to an end the Indian war which had been raging for several years . . .. In 1871, he was sent . . . to end the war with the Apaches and other hostile tribes in northern Arizona . . .. In 1875, he was placed in command of the Department of the Platte, where trouble was expected with the Sioux and Cheyenne tribes of Indians on account of the discovery of gold in the Black Hills of Dakota. Here he took a prominent part in the great Sioux War of 1876 . . .." G. J. Fiebeger, "Crook, George," Dictionary of American Biography, IX, 563.

[18]General William T. Sherman was put in charge of the military division of the Mississippi following the Civil War. This

Major General M. C. Meigs,[19] Secretary of the Interior Carl Schurz,[20] and Commissioner of Indian Affairs E. A. Hayt were among the notables appearing before the committee.[21] Most of the testimony consisted of a repetition of arguments, both for and against the transfer, that had been presented during earlier debates on the subject. A large amount of statistical material was presented by the Department of the Interior, however, and

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office included jurisdiction over the departments of Ohio, Missouri and Arkansas, the latter two of which were almost exclusively concerned with Indian affairs. In 1866, Sherman became lieutenant-general of the army and in 1869, became general of the army when Grant entered the Presidential office. In 1871, Sherman visited the Southwest on an inspection trip and was present for the entire Jacksboro Affair. Thus Sherman had a firsthand knowledge of Indian affairs. "Sherman, William T.," The National Cyclopedia of American Biography, IV, 34; and Robert G. Athearn, William Tecumseh Sherman and the Settlement of the West, 289-296.

[19]General Montgomery C. Meigs was not acquainted with Indian affairs, but he was called before the joint committee to speak on the purchasing and supply systems of the army. Meigs was appointed quartermaster-general of the army in 1861 and served in that position throughout the entire Civil War. During that period alone, Meigs was responsible for the expenditure of over fifteen hundred millions of dollars. Charles Dudley Rhodes, "Meigs, Montgomery C," Dictionary of American Biography, XII, 508.

[20]Carl Schurz held the rank of general during the Civil War, but in 1868, moved into the field of politics. In the political arena Schurz was an acknowledged liberal and actively worked for Horace Greeley in the 1872 Liberal Republican convention which nominated Greeley. In 1877, President Hayes appointed Schurz as Secretary of the Interior. In the office, "he introduced competitive exams for positions in the service and provided for the protection of the forests on the public domain . . .." Schurz also began reforms in the Indian Bureau. "Schurz, Carl," The National Cyclopedia of American Biography, III, 202-203.

[21]45th Cong., 3rd sess., Senate Miscellaneous Document No. 53, 405-406.

for the first time the Commissioner of Indian Affairs and the Secretary of the Interior appeared in person before a Congressional committee to protest the transfer of the Indian Bureau to the Department of War. Commissioner E. A. Hayt explained new changes in the Bureau, which he felt eliminated many of the reasons offered by proponents of the transfer. He stated:

> Until the fiscal year of 1876 and 1877, each Indian agent had charge of the disbursement of the funds . . . for his agency. At the present time the total disbursements of Indian agents for other purposes than the payments of cash annuities and the salaries of employés do not exceed $100,000.
>
> Formerly almost all the money expended for the Indian service was spent in payment for open-market purchases. Now almost all expenditures are made by payments through the Treasury Department for goods purchased under contracts made by the Commissioner of Indian Affairs.
>
> Formerly agents were the sole judges of the necessities for making purchases. Now they must submit their proposals and estimates and give satisfactory reasons to the Commissioner of Indian Affairs, who, if he approves, must ask the Secretary of the Interior for authority to make the purchases.
>
> Formerly there was nothing to prevent contractors putting in straw bids, or withdrawing after a contract had been awarded to them, in order that a bidder at a higher price (oftentimes the same party under another name) might receive the award. Now bidders are obliged to deposit certified checks . . . for five per cent. upon the amount of the contract to be awarded, which checks will be forfeited if, upon the award being made, the party fails to enter into contract.
>
> Formerly contracts were so drawn that those to whom beef and flour contracts were awarded could . . . take advantage of the necessities of the Indians to force agents to accept grades inferior to those called for by the contracts. Now these contracts are so drawn that if a contractor fails to carry out his agreement . . . he is subjected to a heavy loss.
>
> Formerly agents hired as many employés as they saw fit and paid them such salaries as they chose. Now all employés must be approved by the Secretary of the Interior, and legal limits are fixed to the amounts which may be expended for agency employés . . ..

> Formerly funds were remitted quarterly to agents, even though their accounts might not have been sent in for two or three years. Now remittances to agents are not made . . . until their accounts for the preceding quarter have been received in the Indian Office. . . .
>
> Formerly agents expended government property in such manner as they thought best. Now sufficient reasons must be given for the disposal of any government property, and authority must be obtained from the Secretary of the Interior before any expenditure can be made. . . .
>
> Formerly flour was accepted at an Indian agency without any inspection. Now it is inspected before shipment and again upon its arrival at the agency.
>
> Formerly when beef-cattle were delivered at agencies, two or three head were selected . . . and by their weights an estimate was made of the weight of the whole herd. Now the agent must render a certified weigher's return for all animals received.
>
> Formerly Indian traders were permitted to charge whatever prices they might elect . . .. Now their prices are controlled by the Indian Office.
>
> Formerly a trader might charge an Indian two or three times the price charged a white man for the same kind of goods. Now traders are forbidden to make any distinction in prices, under pain of the forfeiture of their licenses. . . .
>
> In the fiscal year 1874 the appropriations for the Indian service amounted to $8,329,815.80, and the actual number of Indians to be cared for . . . was less than at the present time. For the service during the present fiscal year there was but $4,733,875.72 appropriated, and there now are 250,000 Indians to be cared for.
>
> In addition to the three Indian inspectors . . . formerly allowed, there are now two special agents connected with the bureau. With this force, and a proper administration of the business, there need be no difficulty in detecting frauds and reforming the service. Time alone is needed.[22]

Secretary of the Interior Carl Schurz testified that he was convinced that the Bureau of Indian Affairs should remain in the Department of the Interior. He also believed that most of the

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[22] Ibid., 65-66.

reasons offered for the transfer were "not founded on fact."[23] Following some additional opening remarks, Schurz elaborated on the statement. He answered the charge that most of the Indian wars were caused by the corruption of the civil administration by saying, "The real cause of almost all our Indian wars was the breaking of treaty stipulations or encroachment upon the lands and upon the rights of the Indians by the whites."[24] Schurz then cited the Seminole, Sioux, Navajo, and Modoc wars as examples.

Schurz next answered the claim that military officers dreaded the prospect of more Indian wars and therefore would make excellent agents. He agreed that this statement was true for the higher ranking officers, but argued that the young officers might relish an Indian outbreak in order to gain promotion and distinction.[25]

The suggested economic advantage of the transfer was the next argument to come under the Secretary's fire. After a rather lengthy consideration of a number of Congressional reports from the 1830's and 1840's which showed examples of corruption, inefficiency and mismanagement by the military administration,[26]

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[23] Ibid., 256.

[24] Ibid., 259-260.

[25] Ibid., 261-262.

[26] Ibid., 263-268.

Schurz offered as evidence a table that compared the cost of beef at ten Indian agencies and adjacent military posts. This table showed:

> that the difference between the average prices to be paid by the Indian Bureau and the War Department is about $1.40 per hundred pounds in favor of the Indian Bureau.
>
> The bureau receives annually . . . some 46,000,000 pounds of beef, gross weight. At $1.40 per hundred pounds there would be a difference in the cost of the single article of beef of $640,000.
>
> This sum is more than enough to pay the salaries of all the employés connected with the bureau.[27]

Secretary Schurz next referred to a table showing the opinions of the Indians themselves, as compiled by the Bureau of Indian Affairs.[28] This table showed that of the 79,923 Indians that expressed an opinion, 77,105, or more than 96 per cent, opposed the transfer.[29]

In his conclusion Carl Schurz again stated that the transfer should not be made, but he qualified his position somewhat by recommending that the President be authorized to place certain reservations or tribes under military control for "purely military purposes" in case of an outbreak of trouble.[30]

In the interviews with a number of chiefs, the joint committee asked each of them whether they would rather be under the military

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[27] Ibid., 269.

[28] Ibid., 271.

[29] Ibid., 83-87.

[30] Ibid., 272.

or the civil department. Chief Joseph of the Nez Percés replied, "They stand about in the same position in regard to the government--have about the same authority: the military and the Interior Department. Yet I think both of them could be set aside. . . . We should have one law to govern us all and we should all live together."[31] Bogus Charlie of the Modocs wanted a good man for an agent, but not a soldier.[32] John Jackson of the Shawnees, Thomas Peckham of the Peorias, John Sarahass of the Wyandotts and Inbahomba of the Omahas all stated that they were happy under the present management and did not wish to be transferred to military control.[33]

Brigadier-General George Crook was the first high-ranking officer to appear before the committee. He stated that "there can be no doubt about the propriety of a change," but he hoped that the transfer would not be made.[34] In answer to a question asking his reasons for this attitude, he replied, "I expect that they will want me to take some position or other in it, and I do

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[31] Ibid., 78.

[32] Ibid., 80.

[33] Ibid., 81, 82, 128.

[34] Ibid., 115.

not want it.[35] I have had enough of the Indian."[36] Crook also stated that his position reflected the sentiment of many officers.[37]

S. F. Tappan, a prominent member of the Peace Commission and a former army officer, was called before the committee. He testified that the transfer should be made. Tappan felt that if the Indians could be protected from the whites and be given "equal protection under the law," then a great many of the Indian difficulties and outbreaks could be avoided. Tappan also stated that this system of equal protection of both races was used in Canada and that it worked very well there.[38]

Major General M. C. Meigs, the Quartermaster-General of the United States Army, was summoned before the committee to answer several charges made by Secretary of the Interior Carl Schurz and others on the subject of purchasing and transportation rates. In response to committee questioning, Meigs answered:

> Our system is perfect, and yet I was a little surprised in preparing an answer to some inquiries of this committee to find in some cases that the Indian Department has made contracts for

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[35]It is interesting to note that Crook's testimony was quoted in the reports of both the proponents and opponents of the transfer, but each report quoted him out of context.

[36]Crook may have had enough of the Indians, but not long after the joint committee hearings Crook was sent back to Arizona to try to pacify the Apaches again.

[37]45th Cong., 3rd sess., Senate Miscellaneous Document No. 53, 118.

[38]Ibid., 204-205.

> transportation at considerably lower rates than we have, upon very nearly the same lines. I can only account for it by the fact that they shipped at certain times in large quantities, and, under keen competition, somebody took the contract at a low rate.[39]

General William T. Sherman also testified to the committee. He stated that the Indian agents located with the Sioux, Cheyenne, Arapahoe, Kiowa, and Comanche nations were "utterly and ridiculously powerless to keep these Indians peaceable . . . without the aid of the Army."[40] Sherman then proposed that if the transfer should be made, "the War Department can employ civilian agents for the peaceful tribes, and military agents for the warlike tribes. . . . The military will keep the peace, protect reservations against unlawful intrusions by the whites, and can allow . . . different Christian denominations to compete in the matter of churches and schools."[41]

After considering all the evidence and testimony, the committee found itself evenly divided upon the transfer question. Senator Thomas C. McCreery and Representatives Alfred M. Scales, Andrew R. Boone, and Chas. E. Hooker presented one report. In this document the background of the problem, the faults of the present system, and a great deal of the testimony were discussed.[42]

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[39] Ibid., 232.

[40] Ibid., 219.

[41] Ibid., 220.

[42] 45th Cong., 3rd sess., House Document No. 92, 1-19.

This half of the committee then summed up their report by stating that

> we believe that the interests of the government and the good of the Indian will be best promoted by the transfer proposed, leaving it discretionary with the Secretary of War to appoint civil agents to these agencies wherever in his judgement the interest of all concerned would be best served by such an agent, and officers of the army where the interest of the service required it.[43]

The other four members of the committee--Senators Alvin Saunders and Richard J. Oglesby and Representatives J. H. Stewart and Nelson H. Van Vorhes--submitted their own report with a completely different conclusion.[44] Their report was organized in the same manner as the first report and in several instances both documents quoted testimony from the same witness. Each group, however, only used that portion of the testimony which seemed to support their conclusion. Saunders, Oglesby, Stewart and Van Vorhes concluded their report with the statement that:

> Your committee can discover no reason why the proposed change should be made. They believe that harm rather than good to the red man would result from the change, and that no possible advantage could result to the government from it.
> Your committee are therefore of the opinion . . . that it is not expedient to transfer the Indian Bureau to the War Department.[45]

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[43] Ibid., 20.

[44] 45th Cong., 3rd sess., Senate Report No. 693, i-xx.

[45] Ibid., xix-xx.

This portion of the committee further recommended that "the President should be empowered . . . to place the tribe or tribes that may be hostile or unmanageable, immediately under the control of the military, and to remain so until permanent peace is assured," and further that, "the Indian Bureau should be a distinct department, with the chief a member of the President's Cabinet."[46]

It is interesting to note that no member of the committee changed his original stand, as noted earlier, on the transfer question. It should also be mentioned that the four Congressmen who opposed the transfer were Northern Republicans while the four who favored it were Southern Democrats.[47]

In effect all the efforts of this joint committee were wasted since its members apparently voted along party or sectional lines rather than upon the merits of the two systems.

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[46] Ibid., xix.

[47] George W. Manypenny, Our Indian Wards, 375. It appears that the Southern Democrats may have been trying to embarrass the Republicans by showing that President Grant's Peace Policy was a failure.

CHAPTER V

EPILOGUE

Following the failure of the joint committee to reach a clear decision on the question of where the Bureau of Indian Affairs should be located, support for the transfer fell off rapidly. This was at least partially due to the reforms in the Indian Bureau carried out by Secretary of the Interior Carl Schurz and Commissioner of Indian Affairs E. A. Hayt. These reforms provided for closer supervision of all expenditures by the Bureau, stricter requirements for supply contractors, tighter controls on the agents and Indian traders, and tougher inspections of all goods received by the agencies. In effect, these reforms reduced the budget of the Bureau, curbed many of the corrupt practices that had been prevalent earlier, assured the Indians of better goods and supplies, and generally eliminated many of the reasons the Indians had had for breaking out of the reservations. By doing this, the reforms eliminated a large percentage of the arguments that the transfer proponents had based their case on. In addition, the Indian frontier was becoming more pacified despite localized outbreaks such as the Apache trouble in Arizona and New Mexico.

No further attempts were made in the Forty-Fifth Congress, but during the Forty-Sixth Congress three transfer bills were

proposed (S. 356,[1] H.R. 2484 and H.R. 3439[2]). All three were referred to their respective committees on Indian affairs and all three died in committee. The demise of the transfer issue was apparent in 1880 and 1881. Transfer amendments were declared out of order by the Speaker of the House when attempts were made to include them in the Indian appropriation bills for those years.[3]

After this series of setbacks to proponents of the transfer, they remained silent until 1890. During the winter of 1890-91, on three separate occasions, General Nelson A. Miles suggested:

> The Indians at Pine Ridge and Rosebud Agencies be turned over entirely to the control of the military authorities in order to put an end to the division of responsibilities now existing, in order that one department may be enabled to restore entire confidence and bring about a condition of permanent peace. The officials are in a condition of uncertainty, and the Indians are in doubt as to what their condition is and what to expect in the future.[4]

General Miles' suggestion was answered by the Secretary of the Interior. He stated that conditions at the two agencies were

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[1]Congressional Record, 46th Cong., 1st sess., 272.

[2]Ibid., 46th Cong., 2nd sess., 22-23, 285.

[3]Ibid., 2491-2493, 2497-2498; Congressional Record, 46th Cong., 3rd sess., 538-541.

[4]52nd Cong., 1st sess., House Executive Document No. 1, pt. 5, 143. During this winter an attempt was made to arrest Sitting Bull which resulted in a pitched battle in which he was killed. Shortly afterwards the fight or massacre took place at Wounded Knee and ended the Ghost Dance movement.

not that critical and the Department of War was already on call to put down any uprisings, so there was really no reason to transfer these agencies to military control.[5]

From this point on there was no organized effort to have the Bureau of Indian Affairs transferred to the Department of War, but periodically the Department of the Interior and the Indian Bureau have been severely criticized for their handling of Indian affairs. Even today, in 1973, there is a protest being conducted by a group of militant Indians at Wounded Knee, South Dakota, over the treatment the Indians have received from the Bureau of Indian Affairs.

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[5] Ibid., 144.

CHAPTER VI

SUMMARY

During the mid-nineteenth century the question of which department should be in control of Indian affairs formed a basic part of the larger question of what should be done with the native races living inside the United States. During the 1860's and 1870's there was considerable interest in the problem, with the nation dividing along sectional lines. Easterners, who had little contact with the Indian and even less reason to fear him, tended to view the redman as a "noble savage," and were of the opinion that civilians should be charged with his care. Frontier opinion, however, tended to follow the idea that "the only good Indian is a dead Indian," and that if all the Indians could not be killed off, then at least the military should be placed in charge to keep them at peace. With very few exceptions frontier representatives and delegates in Congress worked actively to get transfer bills passed.

The army, in general, wanted the Indian Bureau back for a number of reasons. With no wars going on the military had little to do and wanted the responsibility for Indian affairs to justify its existence and to keep Congress from further reducing the size of the army. In addition, many officers honestly felt that the military could do a better job of handling Indian affairs and

during the rise of the controversy this issue became a point of honor for the army.

The various religious orders felt that there was no possible reason for the military to be placed in charge again. In fact, even the Roman Catholics, who received little consideration under President Grant's Peace Policy, refused to join the proponents of the transfer. In addition to the churches, both the Indian agents and the Indians themselves generally opposed the transfer.

In the final analysis, both the proponents and the opponents of the transfer had several valid arguments. Those favoring civilian control were probably correct in claiming that the army officer was not the best person to bring civilization to the redman. All available evidence seems to indicate that this faction was also correct in stating that the Department of War had had its chance to administer Indian affairs and had not been particularly effective or efficient.

On the other hand, there was a definite problem concerning the Department of the Interior's methods of purchasing and transporting supplies to the reservations, whereas few if any military posts ever suffered severe or prolonged shortages of supplies. Those favoring the transfer were also accurate in their complaints about the divided authority and the difficulties of relaying information from the agents to the local military commanders when Indians left the reservations. Such information had to ascend the chain of command in the Department of the

Interior, be passed to the Department of War, and descend through that department to the local commander. All of this took valuable time and made the army's job of rounding up Indians much more difficult.

The suggestion of establishing the Bureau of Indian Affairs as a separate department also had its strengths and weaknesses. It would remove the burden of Indian affairs from the secretaries of War and Interior, but it would not solve the problem of coordinating the civilian and military efforts. This suggestion also reintroduced the hotly contested question of whether or not the government could and/or should create any new departments.

In the end, Congress had to make the final decision. Unfortunately Congress never seemed to take the problem seriously. Instead of considering the merits and faults of each position and arriving at a decision that would provide for the best interests of both the government and the Indians, Congress chose to determine the issue on other grounds. It pitted Easterners, who were farther removed from the problem, against Westerners, who were directly affected by the decision. In general, Easterners favored the Department of the Interior's position while the Westerners supported the Department of War. The issue also became strictly partisan at times. As Loring B. Priest stated,

> An analysis of votes on transfer measures reveals the surprising extent to which the Indian became a tool of partisan schemes. Only a complete disregard for Indian welfare enabled the transfer proposal, championed by Republicans in the late sixties, to

> become a rallying point for Democrats a few years later. Yet House Republicans who voted for transfer by 105-12 in 1868 opposed transfer by 102-9 ten years later, while Democrats who had opposed the transfer 21-11 supported it by 121-13 in 1878.[1]

In spite of all the changing of positions on the transfer question in the House of Representatives, no legislation was passed by Congress, not because of the House, but because the Senate continually refused to act on any transfer measures.

The controversy stirred up by the proposed transfer was not totally without results, however. In the face of all the clamor for the transfer, the Department of the Interior was forced to enact some sweeping reforms within the Bureau of Indian Affairs. These reforms did not correct all the problems within the Bureau, but they did result in a far superior system for managing the affairs of the redmen. These reforms plus a pacification of the Indian frontier eliminated any hope of getting the Bureau of Indian Affairs transferred back to the Department of War.

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[1]Loring B. Priest, Uncle Sam's Stepchildren, 21.

BIBLIOGRAPHICAL ESSAY

Very little has been written about the controversy over the transfer of the Bureau of Indian Affairs from the Department of War to the Department of the Interior, or about the movement to reverse the process. Francis P. Prucha's work American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts (Cambridge: Harvard University Press, 1953) contains a great deal of background material on United States Indian affairs, but stops in 1834, fifteen years before the transfer took place. Felix S. Cohen's Handbook of Federal Indian Law (Albuquerque: University of New Mexico Press, 1942) mentions briefly the events leading up to the transfer and the transfer itself, but Cohen's volume is far more valuable for its footnotes than for its written content.

Two articles--Francis E. Leupp, "The Spoils System and the Indian Service," Public Opinion, XVIII (May 23, 1895), 570-571, and Frank Wood, "The Indian Problem," Outlook, LXXV (September 19, 1903), 164-165--give good accounts of the problems within the system of civilian control of Indian affairs. It should be noted, however, that both men were speaking of these problems as they existed in the 1890's and early 1900's even though similar conditions were prevalent in the 1850's through the 1870's.

Peter J. Rahill, in his work The Catholic Indian Missions and Grant's Peace Policy, 1870-1884 (Washington: The Catholic

University of America Press, 1953), mentions the attempt in 1876 to transfer the Indian Bureau back to military control, but does so in a single paragraph.

Only three works deal with the transfer problem in any detail, and of these, two must be used very carefully. John Gibbon's "Transfer of the Indian Bureau to the War Department," American Catholic Quarterly Review, XIX (April, 1894), 244-259, discusses the transfer question fairly extensively and the author obviously believes that the transfer should be made. That is not surprising, however, since, in the 1880's at least, he was a general in the United States Army. His article is of little use, however, since it contains no footnotes or bibliography and must therefore be considered to be entirely the opinions of the author. The article does refer the reader to one source--the Journal of the Military Service Institution of the United States, II, no. 6, 1881, 101-221. Unfortunately this volume contains articles written by Gibbon, Captain E. Butler, and Lieutenant C. E. S. Wood on the subject of "Our Indian Question" for a literary contest. Each of these articles is also lacking in footnotes and bibliographies.

George W. Manypenny devoted a chapter of his book, Our Indian Wards (Cincinnati: Robert Clarke and Co., 1880), to the efforts and findings of the joint committee appointed in 1878 to study the proposed transfer. Manypenny's work could almost be considered an original source, but it must be treated with care

since he himself was a participant in the controversy and was highly prejudiced against the military.

Finally, Loring B. Priest included a chapter on "The Transfer Problem" in his volume, Uncle Sam's Stepchildren (New Brunswick: Rutgers University Press, 1942). Priest's work offers a good survey of the topic although it is somewhat lacking in detail in a few places. The chapter is well documented and Priest's insight into why Congress acted as it did is excellent.

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